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IBM CORPORATION  
INTELLECTUAL PROPERTY LAW  
11501 BURNET ROAD  
AUSTIN, TX 78758

EXAMINER
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SHRESTHA, BIJENDRA K

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* TIMOTHY ALAN DIETZ, XIAOYU SHI, DREW A. TERRY,  
CHARLES GORHAM WARD, and FRANK ALBERT ZAMMARCHI, Jr.

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Appeal 2009-002222  
Application 09/998,046  
Technology Center 3600

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Decided:<sup>1</sup> August 4, 2009

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Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU  
R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

## STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1, 3, 5, 7-11, 13, 15, 17-20, 31, 33, 35, and 37-40 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF THE DECISION

We AFFIRM.

## THE INVENTION

The Appellants' claimed invention is directed to automatically generating quality assurance contract requirements. The invention assesses the quality level of each of a set of quality attributes of a software supplier and generates for each of said quality attributes at least one contract requirement for the supplier based upon the quality level of the attribute. (Spec. 4:9-16). Claim 1, reproduced below, is representative of the subject matter of appeal.

1. A computer controlled display system for generating quality assurance contract requirements for software suppliers comprising:

means for assessing the quality level of each of a set of quality attributes of said software suppliers including

means for dynamically determining one of a plurality of quality levels for each of said set of quality attributes, and

means for generating a different contract requirement for each of said quality levels for each attribute; and

means for generating for each of said quality attributes at least one contract requirement for said supplier based upon the quality level of said attribute wherein said contract requirement involves tracking and reporting of said software development.

### THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Aycock	US 5,765,138	Jun. 9, 1998
Modregger	US 2002/0049642	Apr. 25, 2002
Kansal	US 6,647,374 B2	Nov. 11, 2003
Zinky	US 6,691,148 B1	Feb. 10, 2004

The following rejections are before us for review:

1. Claims 1, 3, 5, 7, 9-11, 13, 15, 17, 19-20, 31, 33, 35, 37, and 39-40 are rejected under 35 U.S.C. § 103(a) as unpatentable over Aycock, Modregger, and Zinky.
2. Claims 8, 18, and 38 are rejected under 35 U.S.C. § 103(a) as unpatentable over Aycock, Modregger, Zinky, and Kansal.

### THE ISSUE

At issue is whether the Appellants have shown that the Examiner erred in making the aforementioned rejections.

With regards to claims 1, 3, 5, 7, 9-11, 13, 15, 17, 19-20, 31, 33, 35, 37, and 39-40, this issue turns on whether Aycock, Modregger, and Zinky disclose the claim limitations argued as missing by the Appellants.

With regards to claims 8, 18, and 38, this issue turns on whether Aycock, Modregger, and Zinky disclose the claim limitations argued as missing by the Appellants.

### FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence:<sup>2</sup>

FF1. Aycock discloses a method for providing an evaluation of suppliers as proposed vendors for a project (Col. 2:38-42). The supplier evaluation system includes quality standards and a supplier self-evaluation system including objective questions (Abstract).

FF2. Modregger discloses a method of managing bids for products or services [0017]. The system evaluates the bids and a contract with the desired performances is generated and forwarded to the successful bidder (Abstract).

FF3. Zinky discloses a system that assures quality of service provided by a distributed network having at least one object (Col. 3:8-11). The system determines a quality of service required by the object and evaluates the contract to select a level of quality of service that corresponds to a current quality of service provided by the network (Abstract).

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<sup>2</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

FF4. Kansal discloses a method of standardizing technology contracts and pricing insurance contracts. The system calculates an insurance premium based on the probability that the vendor would default on the delivery of the project (Abstract).

### PRINCIPLES OF LAW

Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’ *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”) In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *Id.* at 415-16.

### ANALYSIS

*Claims 1, 3, 5, 7, 9-11, 13, 15, 17, 19-20, 31, 35, 37, and 39-40*

The Appellants first argue that the rejection of claim 1 is improper because Aycock does not disclose the generation of a contract requirement

after assessing a supplier (Br. 11). The Appellant also argues that Aycock does not disclose any generated contract requirement based upon the quality level of an assessed attribute of the supplier (Br. 11). The Appellant further argues, in Modregger there is no suggestion “of using the quality level of any attribute of the assessed supplier as a basis to generate a contract provision.” Brief 11. The Appellant also argues that in Zinky there is no suggestion of a “contract requirement generated [for a supplier] as the result of an assessment of the supplier.” Brief 12.

In contrast, the Examiner has determined that the combination, of the Aycock, Modregger, and Zinky patents, discloses all the claimed limitations. Answer 14-17.

We agree with the Examiner. Nonobviousness cannot be established by attacking the references individually, when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Here, the Appellant has attacked the references individually, when rejection was made using a combination of Aycock, Modregger, and Zinky. With regard to the disputed claim limitations, we first determine that Aycock discloses a supplier evaluation system which includes quality standards and a supplier self-evaluation system (FF1). Modregger discloses a method of managing bids for products or services. The system evaluates the bids and a contract with the desired performances is generated and forwarded to the successful bidder (FF2). Zinky discloses a system that determines a quality of service which is required by the object and evaluates the contract to select the level of quality of service that corresponds to a current quality of service provided by the network (FF3). Thus, the combination of references would disclose, a determination of a

quality level and an assessment (shown by Aycock), as well as assessing an attribute (shown by Zinky), and generating an appropriate contract requirement (shown by Modregger).

For these reasons, the rejection of claims 1 is sustained. The Appellant has provided the same arguments for claims 3, 5, 7, 9-11, 13, 15, 17, 19-20, 31, 33, 35, 37, and 39-40 and the rejection of these claims is sustained for the same reasons given *supra*.

#### *Claims 8, 18, and 38*

The Appellants argue that the rejection of claims 8, 18, and 38 is improper because the claims further include a limitation that the contract requirement involves software supplier risk identification and reduction (Br. 13). The Examiner has asserted that this element is shown by Kansal (Ans. 17).

We agree with the Examiner. Kansal discloses a method of standardizing technology contracts and pricing insurance contracts. The system calculates an insurance premium based on the probability that the vendor would default on the delivery of the project (FF4). Thus Kansal has disclosed supplier risk identification and reduction by insurance premiums in the contract. For these reasons the rejection of claims 8, 18, and 38 is sustained.

#### CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1, 3, 5, 7, 9-11, 13, 15, 17, 19-20, 31, 33, 35, 37, and 39-



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40 under 35 U.S.C. § 103(a) as unpatentable over Aycock, Modregger, and Zinky.

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 8, 18, and 38 under 35 U.S.C. § 103(a) as unpatentable over Aycock, Modregger, Zinky, and Kansal.

#### DECISION

The Examiner's rejection of claims 1, 3, 5, 7-11, 13, 15, 17-20, 31, 33, 35, and 37-40 is sustained.

#### AFFIRMED

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